

REMARKS/ARGUMENTS

The specification has been amended at page 1 to indicate the current status of the parent patent application.

The specification has been amended at pages 37 and 40 to include sequence identifiers.

The specification has been amended to include an amended paper copy of the sequence listing, wherein the bibliographic details of the US parent and US provisional applications have been provided.

Pursuant to 37 CFR 1.825(a), Applicants state that the substitute paper copy of the sequence listing includes no new matter.

Pursuant to 37 CFR 1.825(b), Applicants state that the copy of the sequence listing in computer-readable form is the same as the substitute paper copy of the sequence listing.

Claims 59-83 remain in this application. Claims 1-58 have been canceled.

In view of the restriction requirement, a number of elected claims depended from non-elected invention. As discussed in greater detail herein, by way of the present amendments, the claims have been rewritten so that they are all directed to the elected invention.

Specifically, new claim 59 corresponds to claim 24 of record. New claim 71 corresponds to claim 36 of record. New claim 83 corresponds to claim 45 of record. New claim 79 corresponds to claim 52 of record.

Claims 24, 36, 45 and 52 were all directed to subject matter examined in the Office Action (i.e. the elected Group II invention). Corresponding new claims 59, 71, 83 and 79 and the claims dependent thereon are therefore also directed to the subject matter currently under examination.

New claims 75 and 78, and the claims dependent thereon have been added, and do not

find counterparts in the examined claims. However, these claims are believed to be directed to the elected invention in view of their dependencies and subject matter. Claims 75 and 78 and the claims dependent thereon all depend directly or indirectly from new claim 59 and incorporate all of the limitations thereof.

It is further noted that new claim 75 corresponds to claim 20 of parent US Patent No. 6,753,459, but is limited to *Brassica*. New claim 78 corresponds to claim 27 of the '459 patent, and also is limited to *Brassica*.

As noted above, new claim 71 corresponds to claim 36 of record. It is also noted that this claim corresponds to claim 16 of the parent '459 patent, but is limited to *Brassica*.

Claims 59 and 78 are the sole independent claims in the amended claim set. The remaining claims depend directly or indirectly from claim 59 or 78 and incorporate all of the limitations thereof.

Restriction/Election

Applicants submit that the claims, all of which specify that the transgenic plant is a *Brassica* plant, are consonant with the election of the Group II invention, for the reasons discussed above.

Specification Objections

As requested by the Examiner, the cross-reference to related applications at page 1 of the specification has been updated to indicate the current status of the parent patent application.

As requested by the Examiner, the sequence listing has been amended, in both the paper and computer-readable forms, to include the application numbers of the US parent and US provisional applications.

Indefiniteness

Claims 45-48 were rejected under 35 USC § 112, second paragraph, as being indefinite for recitation of "or a related derivative" (in claim 40 on which they depend).

Claim 45 corresponds to new claim 83. Claim 83 specifies “a related auxin derivative that is a substrate for IAMH”, an expression that Applicants believe is not indefinite.

Claims 45-48 were also rejected for recitation of the expression “the phenotype” in claim 40, which the Examiner indicated lacks antecedent basis.

Applicants submit that this rejection does not apply to claim 83, which specifies “a sub-lethal auxin over-production phenotype”.

Written Description

Claims 24-27, 36-39, 45-48 and 52-55 were rejected under 35 USC § 112, first paragraph, as failing to comply with the written description requirement. The Examiner asserts that their specification provides guidance only for a genetic construct comprising the oncogene 2 coding sequence from *Agrobacterium tumefaciens*, which encodes the enzyme indoleacetamide hydrolase (IAMH).

Applicants submit that this rejection is overcome by the amendments to the claims such that they all specify that the conditionally lethal gene encodes IAMH. Applicants submit that the rejections of the claims may now be withdrawn.

Enablement

Claims 24-27, 36-39, 45-48 and 52-55 were rejected under 35 USC § 112, first paragraph as lacking enablement. The Examiner asserts that enablement is limited to a genetic construct comprising a gene encoding IAMH.

Applicants submit that these rejections are overcome by the amendments of the claims such that they all specify that the conditionally lethal gene encodes IAMH. Applicants submit that the rejections may now be withdrawn.

Anticipation

Claims 24-27 and 36-39 were rejected under 35 USC § 102(b) as being anticipated by Jorgensen (U.S. Patent 5,278,057).

Claims 24-27 and 36-39 were rejected under 35 USC § 102(b) as being anticipated by Fabijanski et al. (U.S. Patent 5,426,041).

Applicants submit that the claims, as presently amended, are novel over the cited references.

New claims 79-82 are based on previous claim 52, which the examiner deemed to be free of the prior art of record. The remaining claims depend either directly or indirectly from claim 59, which is directed to:

A transgenic *Brassica* plant, comprising:

a conditionally lethal first gene expressible in a plant cell of said transgenic *Brassica* plant, said conditionally lethal first gene being a gene encoding indoleacetamide hydrolase (IAMH); and

a second gene expressible in said plant cell of said transgenic *Brassica* plant, said second gene, when expressed in said plant cell, conferring a non-naturally occurring trait of interest on said plant cell, said second gene being selected from the group consisting of:

- (a) a gene which, when expressed in said plant cell, confers insect resistance on said plant cell;
- (b) a gene which, when expressed in said plant cell, confers an output trait on said plant cell;
- (c) a gene encoding an industrially useful enzyme;
- (d) a gene encoding a pharmaceutically active compound;
- (e) a gene encoding rennin or hirudin; and
- (f) a gene encoding an antisense RNA.

Applicants submit that the subject matter of claim 59 is novel over the cited references and that claims 60-78 and 83, all of which recite a transgenic *Brassica* plant cell according to claim 59,

are similarly novel.

Obviousness

Claims 24-27, 36-39 and 45-48 were rejected under 35 USC § 103(a) as being unpatentable over Dotson et al. (U.S. Patent 5,254,801) in view of Moloney et al. (U.S. 5,750,871).

Claims 24-27 and 36-39 were rejected under 35 USC § 103(a) as being unpatentable over WO 97/40179 (PIONEER) in view of Moloney et al. (US 5,570,871).

Claims 45-48 were rejected under 35 USC § 103(a) as being unpatentable over Fabijanski et al. (U.S. Patent 5,426,041) in view of Dotson et al. (U.S. Patent 5,254,801).

Claims 25-27, 37-39 and 46-48 were rejected under 35 USC § 103(a) as being unpatentable over Dotson et al. (U.S. Patent 5,254,801) in view of Moloney et al. (U.S. Patent 5,570,871), further in view of Sernyk et al. (U.S. 5,965,755).

Claims 25-27 and 37-39 were rejected under 35 USC § 103(a) as being unpatentable over Jorgensen (U.S. Patent 5,278,057) in view of Sernyk et al. (U.S. Patent 5,965,755).

Claims 25-27 and 35-39 were rejected under 35 USC § 103(a) as being unpatentable over WO 97/40179 (PIONEER) in view of Moloney et al. (U.S. Patent 5,750,871), further in view of Sernyk et al. (U.S. Patent 5,965,755).

Claims 46-48 were rejected under 35 USC § 103(a) as being unpatentable over Fabijanski et al. (U.S. Patent 5,426,041) in view of Dotson et al. (U.S. Patent 5,254,801), further in view of Sernyk et al. (U.S. Patent 5,965,755).

Applicants submit that the claims, as presently amended, patentably distinguish over the cited references.

New claims 79-82 are based on previous claim 52, which the examiner deemed to be free of the prior art of record. The remaining claims depend either directly or indirectly from claim 59, which is directed to:

A transgenic *Brassica* plant, comprising:

a conditionally lethal first gene expressible in a plant cell of said transgenic *Brassica* plant, said conditionally lethal first gene being a gene encoding indoleacetamide hydrolase (IAMH); and

a second gene expressible in said plant cell of said transgenic *Brassica* plant, said second gene, when expressed in said plant cell, conferring a non-naturally occurring trait of interest on said plant cell, said second gene being selected from the group consisting of:

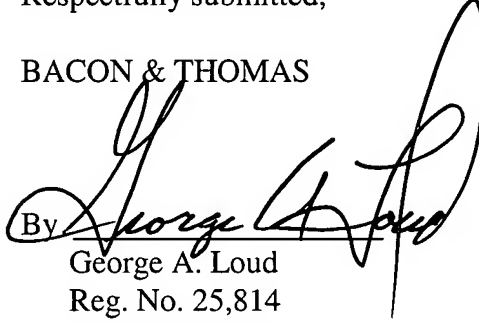
- (a) a gene which, when expressed in said plant cell, confers insect resistance on said plant cell;
- (b) a gene which, when expressed in said plant cell, confers an output trait on said plant cell;
- (c) a gene encoding an industrially useful enzyme;
- (d) a gene encoding a pharmaceutically active compound;
- (e) a gene encoding rennin or hirudin; and
- (f) a gene encoding an antisense RNA.

Applicants submit that the none of the cited references, or any combination thereof, teach or suggest the subject matter of claim 59, or of claims 60-78 and 83, all of which recite a transgenic *Brassica* plant cell according to claim 59. Accordingly, Applicants submit that the claims, as amended, are unobvious over the prior art of record.

In view of the foregoing, early favorable consideration of this application is earnestly solicited.

Respectfully submitted,

BACON & THOMAS

By 
George A. Loud
Reg. No. 25,814
Tel.: (703) 683-0500

Date: October 2, 2007

625 Slaters Lane
Fourth Floor
Alexandria, VA 22314
(703) 683-0500

DES:jrw:srq